

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC WILTON BURTON,

Petitioner,

v.

MATTHEW CATE, Secretary of California  
Department of Corrections and Rehabilitation,

Respondent.

Civil No. 08cv0325-LAB (POR)

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

**[Document No. 195]**

On October 27, 2010, Petitioner filed a Motion for Reconsideration to Litigate the Contention[s] of the 4th and 14th U.S. Constitutional Violations, which the Court construes as a Motion to Reconsider the Court's Denial of Petitioner's Motion to Amend his First Amended Petition. (Doc. 195.)


On April 1, 2010, Petitioner filed a Motion of Consideration to Litigate Contention of 4th and 14th U.S. Constitutional Violations, which the Court construed as a Motion to Amend First Amended Petition. (Doc. 156.) On July 14, 2010, this Court issued a Report and Recommendation that Petitioner's Motion to Amend First Amended Petition be denied. (Doc. 173.) First, the Court found Petitioner's Fourth Amendment claim is not cognizable on federal habeas review. Second, even if Petitioner's claim were cognizable on federal habeas review, the Court found that the factors which guide federal courts in deciding whether to grant leave to amend weighed in favor of Respondent. On August 23, 2010, District Judge Burns adopted this Court's Report and Recommendation. (Doc. 186.)

1 Reconsideration is an extraordinary remedy to be used sparingly. Absent highly unusual  
2 circumstances, a motion for reconsideration will not be granted “unless the District Court is  
3 presented with *newly discovered evidence, committed clear error, or if there is an intervening*  
4 *change in the controlling law.*” Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th  
5 Cir. 2000) (emphasis added).

6 Upon a review of Petitioner’s current motion, and the Court’s prior motion, it is apparent  
7 Petitioner has not presented newly discovered evidence, the Court did not commit clear error, and  
8 there has been no intervening change in the controlling law. Therefore, the Court finds Petitioner  
9 fails to satisfy the requirements for reconsideration. Based thereon, the Court hereby DENIES  
10 Petitioner’s Motion for Reconsideration. (Doc. 195.)

11 **IT IS SO ORDERED.**

12 DATED: November 29, 2010

13   
14 LOUISA S PORTER  
15 United States Magistrate Judge

16 cc: The Honorable Larry A. Burns  
17 all parties  
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